

HONORABLE BARBARA JACOBS ROTHSTEIN

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AUG 28 2001 MR

AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
DEPUTY

CC: TO JUDGE MR



CV 01-01297 #00000003

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

GENESEE SERVICES CORP , a Washington
Corporation,

Plaintiff,

v

BRUCE T. BERNSTEIN, an individual,

Defendant

Case No : C01-1297

DEFENDANT BRUCE T. BERNSTEIN'S
ANSWER AND AFFIRMATIVE
DEFENSES TO PLAINTIFF'S
COMPLAINT FOR DECLARATORY
JUDGMENT

Defendant, Bruce T. Bernstein, a citizen of New York, through his attorneys, answers the Plaintiff's Complaint for Declaratory Judgment (hereinafter the "Complaint") by admitting, denying, and alleging as follows.

I. ANSWER TO COMPLAINT

1. In answer to the introductory paragraph of the Complaint, Defendant admits that he entered a written employment agreement with plaintiff but denies the statement that "no additional payment is due and owing to defendant, other than his base compensation through July 31, 2001 "

2. In answer to paragraph 1 1 of the Complaint, Defendant denies the allegations therein.

3. In answer to paragraph 1.2 of the Complaint, Defendant denies the allegations therein.

4 In answer to paragraph 2.1 of the Complaint, Defendant admits that Plaintiff is a Washington corporation whose office is located in Bellevue, Washington. As to the other allegations

DEFENDANT BRUCE T. BERNSTEIN'S ANSWER AND
AFFIRMATIVE DEFENSES TO PLAINTIFF'S COMPLAINT
FOR DECLARATORY JUDGMENT - 1

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STOKES LAWRENCE, P.S.
800 FIFTH AVENUE, SUITE 4000
SEATTLE, WASHINGTON 98104-3179
(206) 626-6000

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1 in paragraph 2 1 of the Complaint, Defendant is without sufficient information to admit or deny the
2 allegations and therefore denies the same

3 5 In answer to paragraph 2 2 of the Complaint, Defendant admits that he is a resident and
4 citizen of the State of New York

5 6. In answer to paragraph 3.1 of the Complaint, Defendant admits that Plaintiff and
6 Defendant entered into an employment agreement (the "Agreement") and respectfully refers to the
7 language of the Agreement for the terms and provisions thereof.

8 7 In answer to paragraph 3.2 of the Complaint, Defendant admits that he was hired by
9 Plaintiff for the position of managing director, to perform such duties as Plaintiff's president might
10 reasonably assign him, subject to the supervision of the Board of Directors of Plaintiff.

11 8. In answer to paragraph 3.3 of the Complaint, Defendant respectfully refers to the
12 Agreement for the terms and provisions thereof

13 9 In answer to paragraph 3.4 of the Complaint, Defendant respectfully refers to the
14 Agreement for the terms and provisions thereof

15 10. In answer to paragraph 3 5 of the Complaint, Defendant admits that he was terminated
16 by Plaintiff effective July 31, 2001 and that Advantage Fund II, Ltd. did not invest at least \$50 million
17 in "Qualified Investments" between September 1, 2000 and July 31, 2001. Defendant denies any
18 implication contained in paragraph 3 5 of the Complaint that Defendant is not entitled to the
19 conditionally guaranteed payment referred to in the Agreement

20 11 In answer to paragraph 3.6 of the Complaint, Defendant admits that Plaintiff has
21 informed Defendant that under the Agreement he is not entitled to the amounts guaranteed and that
22 Defendant has insisted that he has a legally enforceable right to receive the guaranteed payment
23 referred to in the Agreement As to the other allegations in paragraph 3.6 of the Complaint, Defendant
24 denies the same

25 12 In answer to paragraph 3.7 of the Complaint, Defendant admits the allegations therein

26 13. In answer to paragraph 3.8 of the Complaint, Defendant respectfully refers to the
27 Agreement for the terms and provisions thereof.

14. In answer to paragraph 3.9 of the Complaint, Defendant respectfully refers to the Agreement for the terms and provisions thereof.

15. In answer to paragraph 4.1 of the Complaint, Defendant realleges paragraphs 1 through 14 as if fully set forth herein.

16. In answer to paragraph 4 2 of the Complaint, Defendant admits the allegations therein

17. In answer to paragraph 4.3 of the Complaint, Defendant denies the allegations therein

18 In answer to paragraph 4.4 of the Complaint, Defendant admits that Plaintiff seeks a declaratory judgment. As to the remaining allegations in paragraph 4.4 of the Complaint, Defendant denies the same.

II. RESERVATION OF RIGHTS

Defendant reserves his rights to plead further answer, affirmative defenses, counterclaims, cross claims, and/or third party claims as investigation and discovery may warrant.

III. AFFIRMATIVE DEFENSES

1. As first affirmative defense, Defendant alleges that the Court lacks personal jurisdiction.

2 As second affirmative defense, Defendant alleges that venue is inappropriate.

3 As third affirmative defense, Defendant alleges that Plaintiff has failed to state a claim on which relief can be granted.

4 As fourth affirmative defense, Defendant alleges that another action which includes the parties and issues herein is currently pending in the United States District Court, Southern District of New York, Case No. 01CV 8041.

IV. PRAYER FOR RELIEF

WHEREFORE, Defendant prays that this Court award the following relief:

1. Dismissal of the Complaint with prejudice or, in the alternative, stay the action until the action pending in the United States District Court, Southern District of New York, Case No. 01CV 8041 is determined.

1 2. An award of attorneys' fees and costs incurred by Defendant, pursuant to the terms of
2 the Agreement; and

3 3. Such other relief as the Court deems just and equitable.

4
5 DATED this 28TH day of AUGUST, 2001.

6 STOKES LAWRENCE, P.S.

7
8 By Mark E. Maynes
9 Mark E. Maynes (WSBA #22721)
10 Attorneys for Defendant Bruce T. Bernstein

HONORABLE BARBARA JACOBS ROTHSTEIN

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GENESEE SERVICES CORP., a Washington
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v.

BRUCE T BERNSTEIN, an individual,

Defendant

Case No : C01-1297

CERTIFICATE OF SERVICE

I do hereby certify that on this 28th day of August, 2001, I caused to be served a true and correct copy of *Defendant Bruce T. Bernstein's Answer And Affirmative Defenses To Plaintiff's Complaint For Declaratory Judgment* by method indicated below and addressed to the following:

By ☒ United States Mail ☐ Overnight Mail ☐ Facsimile ☐ Hand Delivered

Michael Pierson
Riddell Williams P.S
1001 Fourth Avenue, Suite 4500
Seattle, WA 98154

Further, I do hereby certify that on this 28th day of August, 2001, I caused the original of said document to be filed in the United States District Court for the Western District of Washington.


Stephen H Loch